

Message Text

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ACTION EA-09

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3 CSG

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REF: (A) MANILA 1720 (1973 SERIES) DTG 030920Z JUL 73

(B) MANILA 12289 (1973 SERIES) DTG 310834Z OCT 73

(C) STATE 227547 (1973 SERIES) DTG 170116Z NOV 73

(D) NALEGSVCOFF SUBMIC DTG 080902Z SEP 75 (NOTAL)

1. PHIL BUREAU INTERNAL REVENUE (BIR) DENIED RECONSIDERATION OF TAX ASSESSMENT WHICH HAD BEEN MADE ON DEFENDANTS NAMED IN CASE REPORTED IN REFTELS A AND B. BY FORMAL LETTER, BIR ISSUED FINAL ASSESSMENTS AGAINST THE 14 DEFENDANTS IN AMOUNT OF P1,650,506.01 FOR YEAR 1969 AND PROVIDED 30 DAYS TO APPEAL TO TAX COURT. ORIGINAL CRIMINAL CASE REPORTED IN REFTELS A AND B STILL PENDING BEFORE COURT OF APPEALS, AND IT SHOULD BE RECALLED ISSUE THERE IS SOLELY ON QUESTION OF REQUIREMENT TO FILE INCOME TAX RETURN AND NOT THE ACTUAL PAYMENT OF TAXES.

2. COMMANDING OFFICER, SUBIC LEGAL CENTER, HAS NOW RECOMMENDED TO NAVY JAG, WASHDC, THAT (1) NAVY PROVIDE DEFENDANTS WITH LEGAL COUNSEL FOR TAX COURT CASE AND
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(2) USG FILE AMICUS CURIAE BRIEF IN TAX COURT IN

SUPPORT OF DEFENDANTS (REFTEL D).

3. WHILE EMB HAS NO OBJECTION TO SUBIC AUTHORITIES PROVIDING LEGAL COUNSEL TO DEFENDANTS AND, IN FACT, BELIEVE IT IS APPROPRIATE UNDER THE CIRCUMSTANCES, EMB DOES NOT HOLD SAME OPINION CONCERNING FILING AMICUS CURIAE BRIEF ON BEHALF OF USG.

4. ASSESSMENT OF PHILIPPINE INCOME TAX ON USG SALARIES OF US CITIZEN EMPLOYEES PRESENT IN THE PHILIPPINES IN RELATION TO OPERATION OF BASES APPEARS TO BE IN CONFLICT WITH ART. XII OF MBA, AS AMENDED. IN DIPLOMATIC NOTE TO DFA IN DECEMBER 1973, EMB EXPRESSED ITS CONCERN OVER THE ACTION OF BIR IN RELATION TO DEFENDANTS AND STATED THAT EMB EXPECTED THAT CONSULTATIONS WOULD TAKE PLACE BETWEEN THE GOVERNMENTS PRIOR TO ANY UNILATERAL ACTION BEING TAKEN WHICH WOULD CHANGE THE INTERPRETATION OF MBA, WHICH HAD BEEN FOLLOWED FOR 26 YEARS BY BOTH GOVERNMENTS. NO REPLY WAS EVER RECEIVED TO THIS NOTE, BUT IT HAD BEEN ASSUMED DUE TO THE ELAPSE OF TIME NOTE HAD BEEN FORWARDED TO COURT AND BIR HAD RECONSIDERED ITS ASSESSMENT ACTION.

5. EMB IS NOW PREPARING DIPLOMATIC NOTE ON ASSESSMENT CASES IN WHICH WE WILL OUTLINE USG POSITION, SPECIFICALLY REQUEST IMMEDIATE CONSULTATION AND ASK GOP TO HOLD ALL FURTHER ACTION IN ABEYANCE. HOWEVER, BECAUSE OF PAST EXPERIENCE WITH DFA, BELIEVE IT APPROPRIATE FOR DEFENDANTS TO PROCEED WITH APPEAL TO TAX COURT IN ORDER TO PREVENT ANY PRECIPITOUS ACTION BY BIR. IN THIS RESPECT, NAVY PROVIDING ATTORNEY FOR INDIVIDUALS MAY BE DESIRABLE. NOT ONLY WOULD SUCH ALLEVIATE IMMEDIATE HARDSHIP BUT ISSUES INVOLVED IN CASES MAY DIRECTLY AFFECT OTHER MBA PERSONNEL THAT ARE SIMILARLY SITUATED.

6. HOWEVER, EMB BELIEVES IT WOULD BE INAPPROPRIATE FOR USG TO FILE AMICUS CURIAE BRIEF IN TAX COURT. SUCH ACTION COULD BE INTERPRETED BY GOP AUTHORITIES AS USG AGREEING TO HAVE RIGHTS AND OBLIGATIONS CONTAINED IN INTERNATIONAL AGREEMENT ADJUDICATED BY GOP COURT.

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BELIEVE ONLY PROPER METHOD TO RESOLVE DIFFERING INTERPRETATION OF INTERNATIONAL OBLIGATION IS NOT IN LOCAL COURTS BUT BY CONSULTATION BETWEEN GOVERNMENTS. IT IS SUGGESTED THAT DEFENDANTS IN THEIR BRIEF CAN RAISE ALL APPROPRIATE MATTERS INVOLVING THE MBA PROVISIONS. EMB RECOGNIZES THAT TRACK RECORD FOR CONSULTATIONS IN PRESENT MATTER HAS NOT BEEN THE BEST, BUT BELIEVES WE MAY BE ABLE TO FORCE CONSULTATIONS IN LIGHT OF PRESENT

ACTION BY BIR.

7. REQUEST COMMENTS. SULLIVAN

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